

## **VIII. Report on Goal VIII**

### **RECOMMENDATION**

BE IT RESOLVED, that the American Bar Association, in furtherance of its Goal Eight to advance the Rule of Law, and its long-standing commitment to the independence of judges and lawyers in all countries, deplores the interference by the Republic of Chile with the independence of judges and lawyers, in particular, the sanctioning of Appeals Court Judge Carlos Cerda Fernandez for attempting to conduct an independent investigation of "disappeared" Chilean citizens, and the arrest, prosecution, detention without charge and attempted assassination of lawyers who represent individual clients in human rights cases.

BE IT FURTHER RESOLVED, that the American Bar Association calls upon the Government of the Republic of Chile to honor any extradition request made by the United States Government in connection with the 1976 assassination of former Chilean Foreign Minister Orlando Letelier and Ronni Karpen Moffitt, a United States citizen, in Washington D.C., and to investigate fully and bring to justice all persons responsible for violation of fundamental human rights, including the 1986 killing in Chile of Rodrigo Rojas, a Chilean national and resident of the United States;

BE IT FURTHER RESOLVED, that the American Bar Association further calls upon the Government of the Republic of Chile to restore basic human rights by eliminating the practices of vigilante assassinations, arbitrary detention, and torture, and by restoring the full jurisdiction of the civilian courts and the independence of judges and lawyers.

BE IT FURTHER RESOLVED, that the American Bar Association send a delegation of five to seven lawyers and judges to Chile to discuss with counterparts there the role of the independent judiciary, military courts, and the intimidation of lawyers who represent politically unpopular clients.

### **REPORT**

#### **I. Background**

On 11 September 1973, the democratically elected Government of the Republic of Chile led by President Salvador Allende Gossens was overthrown by a four-man Military Junta headed by Chilean Army General

Augusto Pinochet Ugarte.<sup>1</sup> The Junta declared a state of constitutional exception,<sup>2</sup> dissolved the National Congress,<sup>3</sup> suspended all political parties,<sup>4</sup> restricted the judiciary,<sup>5</sup> and assumed supreme authority to govern.<sup>6</sup> The United States recognized the Junta as the Government of the Republic of Chile on 24 September 1973.<sup>7</sup> The coup d'état ended the oldest democratic system in Latin America.<sup>8</sup>

The Junta reduced the State of Internal War to a State of Siege on 11 September 1974, the first anniversary of the coup.<sup>9</sup> General Pinochet formally assumed the office of President of the Republic on 17 December 1974 under Decree-Law No. 806.<sup>10</sup>

A new Constitution was announced on 8 August 1980, replacing the 1925 Constitution as amended by the various constitutive decree-laws under which General Pinochet and the Junta had ruled since 1973.<sup>11</sup> The Chilean people voted to approve the new Constitution by a large majority in a national plebiscite held on 11 September 1980,<sup>12</sup> which General Pinochet chose to treat as a ratification.<sup>13</sup> No public debate was allowed prior to the plebiscite, and official intimidation of those not supporting the Constitution was rampant.<sup>14</sup> The Constitution entered into force on 11 March 1981, together with twenty-nine Transitory Provisions which will remain in force until 1989.<sup>15</sup>

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1. A. BLAUSTEIN, F. ROTH, & R. LUTHER, *Chile Chronology*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz, ed. 1980) [hereinafter *Chronology*] at 1.

2. Decree-Law Nos. 3 and 4 declared a State of Siege exception under the 1925 Constitution. Decree-Laws 3 and 4, *Diario Oficial* (11 Sept. 1973). The next day of the State of Siege was redefined as a State of Internal War. Decree-Law No. 5, *Diario Oficial* (12 Sept. 1973).

3. Decree-Law No. 27, *Diario Oficial* (24 Sept. 1974).

4. Pinochet announced the ban of all leftist political parties on 21 September 1973. *Chronology*, *supra* note 1, at 1. This was extended to cover all political parties on 27 September 1973. *Id.* at 2.

5. Decree-Law No. 1, *Diario Oficial* (11 Sept. 1973).

6. Decree-Laws 1, 2, 3, & 4, *Diario Oficial* (11 Sept. 1973).

7. *Chronology*, *supra* note 1, at 1.

8. UNITED STATES, DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1986 at 425 (Comm. Print 1987) [hereinafter *1986 Country Reports*].

9. *Chronology*, *supra* note 1, at 6.

10. The Junta assumed the legislative powers. Decree-Law No. 806, *Diario Oficial* (17 Dec. 1974).

11. THE POLITICAL CONSTITUTION OF THE REPUBLIC OF CHILE (English trans. 1980), reprinted in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz, ed. 1980) [hereinafter 1980 CONSTITUTION].

12. AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION 132 (1983).

13. *Chronology*, *supra* note 1, at 12.

14. AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION 132 (1983).

15. *Id.*; 1980 CONSTITUTION, Art. 25 & Transitory Provisions 1-29.

## II. The Electoral Process Under the 1980 Constitution

Under the 1980 Constitution, General Pinochet will remain in office until at least 1989, when his term expires.<sup>16</sup> The process requires the Junta to unanimously select a candidate for the Presidency of the Republic at least ninety days prior to the end of Pinochet's term.<sup>17</sup> If the Junta cannot reach unanimity within forty-eight hours, the decision will be made by the National Security Council (NSC).<sup>18</sup> Because the members of the NSC are appointed by the President of the Republic,<sup>19</sup> Pinochet can ensure, if he so desires, that his is the candidate proposed.

The Junta must hold a plebiscite on the proposed candidate within thirty to sixty days.<sup>20</sup> If approved, the proposed candidate will serve an eighty-year term as President with the same powers as his or her predecessor.<sup>21</sup> Within one year after the plebiscite, the President must convene congressional elections and install a National Congress. The Junta will continue to exercise its powers until the National Congress assumes its functions, after which it will dissolve.<sup>22</sup>

If the Junta's proposed candidate is not approved in the plebiscite, however, Pinochet's term as President will be extended for one year.<sup>23</sup> Before the end of this extended term, Pinochet must convene presidential and congressional elections. If the plan is followed, when the newly elected President and National Congress assume their functions, Pinochet will step down as President, the Junta will dissolve, and the Transitory Provisions of the 1980 Constitution will expire.<sup>24</sup> It is unclear whether Pinochet intends to be the Junta's proposed candidate. He has declared repeatedly that he is committed to ensuring the perpetuation of his regime's ideas, but not personnel.<sup>25</sup>

The next two years will be a crucial period in Chilean history. The democratic opposition leadership signed the National Accord for Full Transition to Democracy in order to pressure Pinochet into holding a full competitive election instead of the plebiscite.<sup>26</sup> The September 1986 assassination attempt on Pinochet,<sup>27</sup> coupled with the discovery of leftist

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16. 1980 CONSTITUTION, Art. 25 & Transitory Provisions 13 & 14.

17. 1980 CONSTITUTION, Transitory Provision 27.

18. 1980 CONSTITUTION, Transitory Provisions 17 & 27.

19. 1980 CONSTITUTION, Art. 95.

20. 1980 CONSTITUTION, Transitory Provision 27.

21. 1980 CONSTITUTION, Transitory Provision 28.

22. 1980 CONSTITUTION, Transitory Provision 28.

23. 1980 CONSTITUTION, Transitory Provision 29.

24. 1980 CONSTITUTION, Transitory Provision 29.

25. Constable, *Pinochet's Grip on Chile*, 86 CURRENT HISTORY 39 (Jan. 1987).

26. Graham, "Chile's Pinochet Covers All Options With New Advertising Campaign," *The Washington Post*, 8 Sept. 1986, p. A17.

27. Graham, "Attack Gives Pinochet Political Boost," *The Washington Post*, 14 Sept. 1986, p. A22.

arms caches,<sup>28</sup> has set back the prospects for such an election. Following the attack, Pinochet officially reinstated the State of Siege.<sup>29</sup> Unlike the preceding State of Siege, in force from November 1984 until June 1985, the current emergency has included resurgent paramilitary activity and political killings not acknowledged by the government.<sup>30</sup> The immediate result of the assassination attempt has been to heal some, although not all, of the growing dissatisfaction with Pinochet's rule within the military itself.<sup>31</sup>

The opposition political parties are united in their opposition to the single-candidate plebiscite as called for under Pinochet's 1980 Constitution, calling for a full and free competitive election in its stead.<sup>32</sup> In a letter to Pope John Paul II during his April 1987 visit, the opposition, including the rightist National Renovation Party, the centrist Christian Democrats, and most significantly, the leftist Popular Democratic Movement (which includes the outlawed Communist Party), pledged to defend human life, strive for national reconciliation, and reach a peaceful transition to democracy.<sup>33</sup> Leaders of the opposition have stated that they believe Pinochet could win an election only through fraudulent means.<sup>34</sup> Consequently, impartial voting monitors, perhaps from the Organization of American States or the United Nations, would be necessary to ensure that the true will of the Chilean people was heard.

### III. Human Rights Violations

#### A. IN GENERAL

The Government of the Republic of Chile has infringed on the Chilean people's basic human rights since the coup d'état in 1973.<sup>35</sup> Within the

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28. Graham, "Arms Caches in Chile Prompt Reassessment of Rebel Might," *The Washington Post*, 17 Sept. 1986, p. A1; Christian, "Chile Arms Caches Are Laid to Cuba," *The New York Times*, 19 Oct. 1986, p. 21.

29. Graham, "Wounded Pinochet Lashes Out," *The Washington Post*, 9 Sept. 1986, p. A1.

30. Constable, *Pinochet's Grip on Chile*, 86 CURRENT HISTORY 17 (Jan. 1987).

31. Graham, "Attack Gives Pinochet Political Boost," *The Washington Post*, 14 Sept. 1986, p. A22.

32. Graham, "Chileans Battle at Papal Mass," *The Washington Post*, 4 April 1987, p. A1; "Chile Legalizes Non-Marxist Parties; Opposition Protests," *The Washington Post*, 13 Mar. 1987, p. A35.

33. Graham, "Chileans Battle at Papal Mass," *The Washington Post*, 4 April 1987, p. A1.

34. Constable, *Pinochet's Grip on Chile*, 86 CURRENT HISTORY 39 (Jan. 1987).

35. See AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION (1983) (detailing instances of official and unofficial repression of basic human rights in Chile between 1973 and 1983). A human rights guide, published by the respected British magazine, *The Economist*, stated that "[c]onstant killings and repression by security forces and severe

last year, three states of exception were in force in Chile, permitting the government to arbitrarily detain citizens without charge, among other powers.<sup>36</sup> There have been reliable and documented reports of torture and police mistreatment of those detained by the Chilean security forces. To quote the State Department's 1986 Country Reports:

[M]embers of the security and military forces are widely believed to be responsible for the many kidnappings, beatings, torture, and, in a few cases, murders, carried out against human rights, Catholic Church and opposition figures, for which no suspects have been identified or apprehended.<sup>37</sup>

In addition to the government and right-wing death squads, the extreme left-wing has been responsible for numerous killings and bombings of government buildings.<sup>38</sup> According to the Catholic Church, a total of seventy-two persons died and 409 were wounded in acts of political violence during 1986, at least half of which were committed by the government forces.<sup>39</sup>

Significantly, the recent report of a mission to Chile, issued in March 1987 jointly by the Association of the Bar of the City of New York and the International Bar Association, was "unable to find evidence of a single case since 1973 where, after appeals, an officer of the state had been convicted of violating the rights of any individual of the Pinochet regime."<sup>40</sup> In stark contrast, the report cited "the consistent record of swift and successful prosecutions involving crimes against the state, or of acts of violence committed by civilians against security officers."<sup>41</sup>

Arbitrary arrest and detention increased during 1986.<sup>42</sup> Under Transitory Provision 24 of the 1980 Constitution, the Government may hold a person for five days without bringing charges, and this is extended to twenty days if a "terrorist act" is involved.<sup>43</sup> Prisoners are often held incommunicado during their initial detention.<sup>44</sup> Once formally charged, the prisoners are allowed an attorney of their own choosing.<sup>45</sup>

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limitations on all human rights have been features of the present military rule." C. HUMANA, *WORLD HUMAN RIGHTS GUIDE* 55 (1986).

36. 1986 Country Reports, *supra* note 8, 425.

37. *Id.* See also U.N. Comm'n on Human Rights, "Question of Human Rights in Chile," U.N. Doc. E/CN.4/1987/L.89 (10 Mar. 1987).

38. Graham, "Arms Caches in Chile Prompt Reassessment of Rebel Might," *The Washington Post*, 17 Sept. 1986, p. A1.

39. 1986 Country Reports, *supra* note 8, 426.

40. W. ZABEL, D. ORENTLICHER, & D. NACHMAN, *HUMAN RIGHTS AND THE ADMINISTRATION OF JUSTICE IN CHILE: REPORT OF A DELEGATION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND OF THE INTERNATIONAL BAR ASSOCIATION* 5 (31 Mar. 1987) [hereinafter *HUMAN RIGHTS REPORT*].

41. *Id.*

42. *Id.* at 430.

43. 1980 CONSTITUTION, Transitory Provision 24.

44. *HUMAN RIGHTS REPORT*, *supra* note 40, at 3.

45. 1986 Country Reports, *supra* note 8, at 431. See also *HUMAN RIGHTS REPORT*, *supra* note 40, at 37 (describing the defense of politically-charged cases by Chilean attorneys).

The Pinochet regime has consistently used torture on political detainees in clear violation both the 1980 Constitution<sup>46</sup> and international law.<sup>47</sup> According to Americas Watch, a typical DINA<sup>48</sup> detention,

The victim was . . . brought blindfolded, kept incommunicado for the interrogation period, then sent on to prison or hospital after signing a blank sheet of paper absolving the secret police of any wrongdoing. This practice remains essentially the same today, under CNI auspices.

. . . .

The methods of physical torture indeed command attention . . . [the victim was] forced to eat garbage, excrement; "dry submarine" (near-asphyxiation with a sack over head, repeated several times); "wet submarine" (head submerged in large can of oil); "sylvania" (victim fastened to a chair, electrodes applied to most sensitive parts of body—soles of feet, testicles); beaten while given electric shock; hung by the hands between two trees while beaten with stick on most sensitive parts of body; "pau de arara" ("parrot perch") (hung in a twisted position from a pole, electricity applied); "parrilla" (grill) (victim strapped to metal grill, electric shock applied).<sup>49</sup>

Psychological as well as physical torture is used by the Chilean government, often causing equally severe damage as the purely physical abuse.<sup>50</sup>

The independence of the judiciary and freedom of attorneys to pursue their cases is another grave issue in Chile. One of the most striking examples of the difficulties faced in the pursuit of justice is that of the "Desaparecidos" ("disappeared ones") case. In 1983, Appeals Court Judge Carlos Cerda Fernandez took over the investigation of the disappearance of ten persons arrested in 1976 by DINA.<sup>51</sup> The case had languished prior to Judge Cerda's appointment as *Ministro en Visita* for the case.<sup>52</sup> The security services and armed forces obstructed his inquiry repeatedly, avoiding or disobeying his orders, and placed him under almost constant surveillance.<sup>53</sup>

On 14 August 1986, Judge Cerda indicted 40 persons on charges of illegal association and kidnapping, including several high-ranking officers

46. The 1980 Constitution prohibits torture. 1980 CONSTITUTION, art. 19 (1). This prohibition is non-derogable. AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION 67 (1983).

47. See generally AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION 67-79 (1983) (describing in detail the torture practices of the Pinochet government).

48. DINA is the former name of the CNI, the Chilean secret police.

49. AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION 68, 71-72 (1983). See also AMERICAS WATCH, HUMAN RIGHTS CONCERNS IN CHILE (1987) (describing current torture practices).

50. *Id.* at 72-75.

51. HUMAN RIGHTS REPORT, *supra* note 40, at 23.

52. *Id.* Chile has a civil law system where the investigatory, prosecutorial, and adjudicatory functions are vested in the person of the civilian trial judge. The *Ministro en Visita* in Chile is an Appeals Court judge functioning as a trial judge in a case of "public alarm," as provided for in Chilean law. HUMAN RIGHTS REPORT, *supra* note 40, at 54 n.9.

53. *Id.* at 24-25.

in the armed forces and security services.<sup>54</sup> The Santiago Appeals Court determined that the Amnesty Law enacted in 1979<sup>55</sup> barred the indictments, and therefore dismissed them on 10 September 1986.<sup>56</sup> The Chilean Supreme Court affirmed on 6 October 1986.<sup>57</sup>

According to the delegation of the Association of the Bar of the City of New York and the International Bar Association, "virtually every Chilean jurist with whom we met shared Judge Cerda's view that the Appeals Court's construction of the Amnesty Law as a bar to the indictments was erroneous."<sup>58</sup> In reply and in accordance with Article 226 of the Chilean Penal Code, Judge Cerda issued an opinion rejecting the conclusion reached by the appellate courts and declaring his refusal to close the case file as ordered. Under Article 226, a judge is required to exercise "reflective obedience" by refusing any order that is illegal, plainly irregular, or would result in unforeseen injustice, and then by communicating his reasons to his superiors. If the superior then insists, the judge must obey, but does not bear any penal responsibility in the event the order is later held unlawful.<sup>59</sup> In a chilling response, the Chilean Supreme Court not only again ordered the case closed, but severely reprimanded Judge Cerda, stripping him of any power in the case and suspending him from the bench for two months.<sup>60</sup> The message to judges bent on pursuing justice in human rights cases is disturbingly clear: Do not interfere.

The Chilean secret police, the CNI, have also not been following other court orders:

[T]he Court of Appeals in Valdivia ordered a military judge to initiate a charge of contempt against the CNI for failing to comply with court orders to bring before the court 18 people who had been detained. The Court further denounced the CNI for providing contradictory information, and for using delaying tactics to avoid obeying court orders. According to human rights groups, this case is unique in that the court took action to attempt to force the CNI to comply with court orders, whereas in most instances the courts simply fail to follow up when their requests are denied or ignored by the security forces.<sup>61</sup>

Pinochet has assured the Supreme Court that the security and armed forces have been ordered to comply in the future.<sup>62</sup>

The Pinochet government has also harassed those attorneys brave enough to defend those persecuted by the security and armed forces. There are

54. *Id.* at 25-26.

55. Decree-Law No. 2,191, *Diario Oficial* (18 Apr. 1979).

56. Graham, "Pinochet Denounces Opponents," *The Washington Post*, 12 Sept. 1986, p. A25.

57. HUMAN RIGHTS REPORT, *supra* note 40, at 26.

58. HUMAN RIGHTS REPORT, *supra* note 40, at 27.

59. *Id.* at 28.

60. *Id.* at 28-29.

61. 1986 *Country Reports* 433.

62. *Id.* at 433.

two groups of attorneys active in human rights work: The *Vicaria de la Solidaridad*<sup>63</sup> and the *Comite de Defensa de los Derechos del Pueblo*.<sup>64</sup> Both groups have suffered death threats, abductions, attempted abductions, arbitrary arrests, and other forms of both official and unofficial harassment.<sup>65</sup>

The practice of forced exile of political opponents has long been a staple of the Pinochet regime.<sup>66</sup> Human rights organizations estimate over 50,000 lawyers, churchmen, leftists, labor activists, and other have been branded as threats to national security and ordered out of the country.<sup>67</sup> The Catholic Church and both leftist and rightist political parties have called for an end to this practice.<sup>68</sup>

## B. THE ASSASSINATION OF LETELIER AND MOFFITT

On 21 September 1976, Orlando Letelier and Ronni Karpen Moffitt were killed by an explosive device that detonated as their car entered Sheridan Circle on Embassy Row in Washington, D.C.<sup>69</sup> Letelier, former Chilean Ambassador to the United States and cabinet minister for President Salvador Allende Gossens, was living in exile in the United States and working as the Director of the Transnational Institute of the Institute for Policy Studies.<sup>70</sup> Ronni Moffitt was an aide and Institute fundraiser.<sup>71</sup> Her husband, Michael Moffitt, was seriously injured in the blast.<sup>72</sup>

63. The *Vicaria de la Solidaridad* (Vicariate of Solidarity) is the Catholic human rights group dedicated to the filing of *recurso de amparo* petitions (the Chilean equivalent of a *habeas corpus* petition) on behalf of those detained under irregular circumstances, and to the prosecution of complaints by the victims of torture and other forms of official abuse. *Id.* at 36.

64. The *Comite de Defensa de los Derechos del Pueblo* (Committee for the Defense of the Rights of the People), known as CODEPU, has as its primary work the defense of persons defined as political opponents of the Pinochet government, especially those "untouchables" accused of "terrorism." *Id.* at 37.

65. See, e.g., HUMAN RIGHTS REPORT, *supra* note 40, at 35-50 (describing in detail several instances of official and unofficial harassment of human rights attorneys, including the attempted abduction/assassination of Luis Toro, official investigation and threats against Hector Salazar, and the pending prosecution of Gustavo Villalobos); "Action Item No. 1: Vicaria Lawyers, Chile," in ABA Section of International Law and Practice, International Human Rights Committee, *Network Mailing* at 3 (Nov. 1986) (alerting members of the detention of *Vicaria* attorneys in Chile).

66. AMERICAS WATCH, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION 87-96 (1983); AMERICAS WATCH, HUMAN RIGHTS CONCERNS IN CHILE (1987).

67. Graham, "Chilean's Return Dramatizes Exiles' Plight," *The Washington Post*, 26 Mar. 1987, p. A37.

68. *Id.* See also AMERICAS WATCH, HUMAN RIGHTS CONCERNS IN CHILE (1987) (describing change in right of return policy).

69. *De Letelier v. Republic of Chile*, 748 F.2d 790, 791 (1984).

70. *Chronology of Events: Letelier-Moffitt Assassination, Investigation, and Trials*, 2 CHILE NEWS 13 (Feb. 1987).

71. *Id.*

72. *De Letelier v. Republic of Chile*, 748 F.2d 790, 791 (1984).



Acting on information provided by American mercenary and co-conspirator Michael Vernon Townley, the man responsible for planting the bomb, a U.S. Grand Jury handed down indictments against General Juan Manuel Contreras Sepulveda, former head of DINA, DINA operations director Pedro Espinoza Bravo, DINA agent Armando Fernandez Larios, and five members of the anti-Castro Cuban Nationalist Movement.<sup>73</sup> Three of the Cubans, Guillermo Novo Sampol, Alvin Ross Diaz, and Ignacio Novo Sampol, were convicted.<sup>74</sup> At their sentencing, Judge Barrington Parker stated that in the ten years he had served on the bench, he had not "presided over a trial of a crime as monstrous as this" and that it was "a form of terrorism that has no place in this country."<sup>75</sup> On appeal, the U.S. Court of Appeals ordered new trials for Guillermo Novo and Alvin Ross on the grounds that evidence obtained by jailmates acting as government informants was inadmissible.<sup>76</sup> The appellate court indicated that the circumstances leading up to the assassination and evidence of their participation "all support the conclusion" that the two were guilty of conspiracy to commit murder.<sup>77</sup> On retrial, however, Novo and Ross were acquitted of both murder and conspiracy charges.<sup>78</sup>

Contemporaneously, survivors of Orlando Letelier and Ronni Moffitt filed a civil suit for damages against the Government of the Republic of Chile, the DINA (not CNI), four DINA agents, and the five indicted Cuban exiles.<sup>79</sup> Finding jurisdiction under the Foreign Sovereign Immunities Act and its exception to immunity in the case of intentionally wrongful acts committed in the territory of the United States by foreign states, Judge Joyce Green awarded \$4.9 million in damages as well as attorneys' fees and costs. Of that total, the Chilean Government was held liable for \$2.9 million.<sup>80</sup> Subsequently, after Chile refused to pay the damages, Judge

73. *United States v. Sampol*, 636 F.2d 621, 629 (D.C. Cir. 1980).

74. Guillermo Novo and Alvin Ross were convicted of conspiracy to murder a foreign official, murder of a foreign official, first-degree murder of both Letelier and Moffitt, murder by use of explosives to blow up a vehicle engaged in interstate commerce. In addition, Guillermo Novo was convicted of making false declarations to a grand jury. Ignacio Novo was also convicted of making false declarations to a grand jury and misprision of a felony. *United States v. Sampol*, 636 F.2d 621, 629 (D.C. Cir. 1980).

75. Bredemeier, "Two Get Life Sentences in Letelier Death," *The Washington Post*, 24 Mar. 1979, p. A1.

76. *United States v. Sampol*, 636 F.2d 621, 630 (D.C. Cir. 1980). Ignacio Novo was granted a new trial for failure of the trial court to grant him a separate trial. *Id.*

77. *United States v. Sampol*, 636 F.2d 621, 677 (D.C. Cir. 1980).

78. Kiernan, "Acquitted in Letelier Murder Case," *The Washington Post*, 31 May 1981, p. A1. Guillermo Novo was, however, convicted on two counts of making false declarations to a grand jury. *Id.* He was later sentenced to four and one-half years in prison. Pichirallo, "Cuban Sentenced for Perjury in Letelier Case," *The Washington Post*, 27 June 1981, p. B1.

79. *de Letelier v. Republic of Chile*, 502 F. Supp. 259 (D.D.C. 1980).

80. *de Letelier v. Republic of Chile*, 502 F. Supp. 259, 266-68 (D.D.C. 1980).

Morris Lasker ordered the appointment of a receiver of the property interest of the Republic of Chile in Linea Aerea Nacional—Chile (LAN-Chile, the Chilean national airline) so that the judgment obtained could be satisfied.<sup>81</sup> LAN-Chile and the Republic of Chile are separate juridical entities, and even if they were not, Congress did not intend the Foreign Sovereign Immunities Act to allow for execution against a foreign sovereign's property under the circumstances of this case.<sup>82</sup> The U.S. Supreme Court denied certiorari on 28 May 1985.<sup>83</sup>

During the course of these proceedings, the United States Government actively sought extradition of the indicted secret police officials from Chile.<sup>84</sup> On 2 October 1979, the Chilean Supreme Court refused a final appeal for extradition.<sup>85</sup> U.S. Ambassador to Chile George Landau was briefly withdrawn for consultations and the State Department referred to the assassination as an act of "international terrorism."<sup>86</sup> Additional sanctions were later imposed, including a cutoff of \$6 million in U.S. economic and military aid, cessation of Export-Import Bank and OPIC operations in Chile, a reduction in the size of the U.S. Mission, and a stop on already authorized military shipments.<sup>87</sup>

Events took a dramatic turn in February 1987. On 4 February 1987, Major Armando Fernandez Larios, the indicted former DINA agent, voluntarily appeared in U.S. District Court to confess his involvement in the assassination of Letelier and Moffitt.<sup>88</sup> In exchange for a reduction of charges to accessory after the fact, Fernandez testified about his role in locating Letelier's Washington address and about the subsequent refusal of Chilean officials to allow him to return to the U.S. to clear his name.<sup>89</sup> Fernandez's testimony implicated President Pinochet and other officials in the cover up and indirectly implicated Pinochet as the source of the order to assassinate Letelier.<sup>90</sup>

81. *de Letelier v. Republic of Chile*, 502 F. Supp. 1217, 1219 (S.D.N.Y. 1983).

82. *de Letelier v. Republic of Chile*, 748 F.2d 790, 799 (2d Cir. 1984). "Congress provided for execution against property used in commercial activity upon which the claim is based. An act of political terrorism is not the kind of commercial activity that Congress contemplated." *Id.*

83. *de Letelier v. Republic of Chile*, 471 U.S. 1125 (1985).

84. Krause, "Chile's High Court Rejects U.S. Plea in Letelier Case," *The Washington Post*, 2 Oct. 1979, p. A1. The indicted officers sought were General Juan Manuel Contreras Sepulveda (former head of DINA), Colonel Pedro Espinoza, and Captain Armando Fernandez Larios. *Id.*

85. *Id.*

86. Krause, "U.S. Recalls Envoy After Letelier Ruling," *The Washington Post*, 3 Oct. 1979, p. A9.

87. Goshko and Robinson, "U.S. Eying Cutback in Aid to Chile," *The Washington Post*, 18 Oct. 1979, p. A1.

88. Shenon, "Ex-Chilean Agent, in the U.S., Admits Letelier Slaying Role," *The New York Times*, 5 Feb. 1987, p. A1.

89. *Id.*

in the cover up and indirectly implicated Pinochet as the source of the order to assassinate Letelier.<sup>90</sup>

### C. THE KILLING OF RODRIGO ROJAS

Rodrigo Rojas de Negri, a nineteen-year-old U.S. resident and son of a Chilean living in exile in Washington, D.C., was killed by a Chilean military patrol while in one of Santiago's poor neighborhoods to photograph a student demonstration in July 1986.<sup>91</sup> Eyewitnesses said the group was stopped by a military patrol, and Rojas and a companion, Carmen Gloria Quintana Arancibia, were deliberately beaten and set on fire by members of the patrol.<sup>92</sup> The patrol then dumped the two victims in a drainage ditch ten kilometers away.<sup>93</sup> After being helped to a hospital by passersby, Rojas and Quintana were denied access to superior burn-treatment facilities by government officials.<sup>94</sup> Rojas died from his injuries four days later, and Quintana recovered and is now living in exile in Montreal, Canada.<sup>95</sup> The Rojas funeral was attended by thousands of people, including U.S. Ambassador Harry Barnes.<sup>96</sup>

The government at first denied that it was involved in the incident. As public outrage grew, the government had to acknowledge its involvement.<sup>97</sup> On 18 July 1986, the military detained twenty-five members of the patrol for Judge Alberto Echavarria, the Ministro en Visita for the case.<sup>98</sup> Judge Echavarria dismissed all charges against twenty-four of the detainees, and dismissed all but one against the commander of the patrol, Lieutenant Pedro Fernandez Dittus. The Lieutenant remained charged with the misdemeanor of negligently causing Rojas' death by "releasing" him from custody after the burning, given his condition. The case was also transferred to military court because the civilian judge had concluded that the Lieutenant was acting in a military function.<sup>99</sup> Because of the resultant furor in the Chilean legal community, a military court upgraded the charge against him to "unnecessary violence," a felony.<sup>100</sup> Another

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90. Fernandez testified that in private conversations with DINA Chief General Contreras indicated that he had followed instructions from "the Chief" in ordering the assassination. It is known that Contreras reported directly to Pinochet in his capacity as DINA Chief. Dinges and Landau, *Derailing Pinochet*, 244 THE NATION 180, 181 (7 Mar. 1987).

91. HUMAN RIGHTS REPORT, *supra* note 40, at 10.

92. *Id.* at 10-11.

93. *Id.* at 11.

94. *Id.*

95. *Id.* at 11-12.

96. *Id.*

97. *Id.* at 12.

98. *Id.* at 12-13.

99. *Id.* at 13-14.

100. *Id.* at 14.

military judge later freed Lieutenant Fernandez on the equivalent of approximately \$25 bail after reducing the charge back down to a misdemeanor. The case is still awaiting trial.<sup>101</sup>

#### IV. The Democracy in Chile Act

Recognizing Chile's continual violations of human rights and the opportunity to press for change represented by the coming Chilean elections, on 10 March 1987, Senators Tom Harkin and Ted Kennedy introduced S. 709 to impose additional sanctions against Chile unless certain conditions are met.<sup>102</sup> S. 709 contains four principal provisions.<sup>103</sup> The proposed legislation would require the United States to vote "no" on assistance to Chile in multilateral development banks. Second, the proposed legislation would abolish benefits provided to Chile under the General System of Preferences and by the Overseas Private Investment Corporation. The legislation would cut off U.S. landing rights for Chile's national airline, LAN-Chile. Finally, the legislation would prohibit the importation for Chilean copper into the United States. These sanctions would remain in effect until the President certifies, and Congress approves by joint resolution, that there have been substantial improvements in human, civil, political and labor rights, coupled with concrete steps toward restoration of democratic government and the bringing to justice those responsible for the Rojas killing and the Letelier-Moffitt assassinations.<sup>104</sup>

#### V. Conclusion

This resolution comes at a very critical time in Chilean history—two years before a scheduled single-candidate plebiscite and/or a full, free, and democratic election, either of which will shape the course of events in Chile for years to come. It is an appropriate time for the American Bar Association to take action to influence the outcome of this process. The rule of law throughout the world is an established and worthy goal of the Association. The current Government of the Republic of Chile disregards the rule of law, and any pressure that can be brought to bear in order to change their practices and return Chile to the peaceful democracy it once was, must be brought. The Section of International Law and Practice, therefore, urges that the American Bar Association adopt the proposed resolution.

101. Graham, "Chileans Battle at Papal Mass," *The Washington Post*, 4 Apr. 1987, at p. A1, A18.

102. 133 CONG. REC. S2941 (daily ed. 10 Mar. 1987) (statement of Sen. Kennedy).

103. S. 709, 100th Cong., 1st Sess., 133 CONG. REC. S2941 (daily ed. 10 Mar. 1987).

104. *Id.*

therefore, urges that the American Bar Association adopt the proposed resolution.

Respectfully submitted,  
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August 1987

